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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JESUS GARCIA,
Plaintiff,

vs.

ATLANTIC BELL H.
DOES 1 to 10,
Defendant

Case No.:

**COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES FOR
VIOLATION OF:**

1. AMERICANS WITH DISABILITIES ACT, 42 U.S.C. §12131 et seq.;
 2. CALIFORNIA'S UNRUH CIVIL RIGHTS ACT, CAL CIV. CODE §§ 51 - 52 et seq.;
 3. CALIFORNIA'S DISABLED PERSONS ACT, CAL CIV. CODE §54 et seq.
 4. CALIFORNIA'S UNFAIR COMPETITION ACT, CAL BUS & PROF CODE § 17200, et seq.
 5. NEGLIGENCE

Plaintiff JESUS GARCIA (“Plaintiff”) complains of Defendants ATLANTIC BELL HOTEL, INC.; and DOES 1 to 10 (“Defendants”) and alleges as follows:

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JURISDICTION AND VENUE

1. The Court has jurisdiction of this action pursuant to 28 USC §1331 for violation of the Americans with Disabilities Act of 1990, (42 USC §12101, *et seq.*)

2. Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same nucleus of operating facts, are also brought under California law, including, but not limited to, violations of California Civil Code §§51, 51.5, 52(a), 52.1, 54, 54., 54.3 and 55.

3. Venue is proper in this court pursuant to 28 USC §1391(b). Defendants reside in this district, San Bernardino County, California.

PARTIES

4. Plaintiff is a California resident with a physical disability with substantial limitation in his ability to walk. Plaintiff suffers from paraplegia due to T4-T5 spinal cord injury and requires the use of a wheelchair at all times when traveling in public.

5. Defendants are, or were at the time of the incident, the real property owners, business operators, lessors and/or lessees of the real property for a restaurant (“Business”) located at or about 6804 Atlantic Ave., Bell, California.

6. The true names and capacities, whether individual, corporate, associate or otherwise of Defendant DOES 1 through 10, and each of them, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff will ask leave of Court to amend this Complaint when the true names and capacities have been ascertained. Plaintiff is informed and believes and, based thereon, alleges that each such fictitiously named Defendants are responsible in some manner, and therefore, liable to Plaintiff for the acts herein alleged.

7. Plaintiff is informed and believes, and thereon alleges that, at all relevant times, each of the Defendants was the agent, employee, or alter-ego of each of the other Defendants, and/or was acting in concert with each of the other Defendants, and in doing the things alleged herein was acting with the knowledge and consent of the other Defendants and within the course and scope of such agency or employment relationship.

1 8. Whenever and wherever reference is made in this Complaint to any act or
2 failure to act by a defendant or Defendants, such allegations and references shall also be
3 deemed to mean the acts and failures to act of each Defendant acting individually, jointly
4 and severally.

FACTUAL ALLEGATIONS

6 9. In or about August of 2022, Plaintiff went to the Business. The Business is a
7 restaurant business establishment, which is open to the public, and is a place of public
8 accommodation and affects commerce through its operation. Defendants provide parking
9 spaces for customers.

10 10. While attempting to enter the Business during each visit, Plaintiff personally
11 encountered a number of barriers that interfered with his ability to use and enjoy the
12 goods, services, privileges, and accommodations offered at the Business. To the extent
13 of Plaintiff's personal knowledge, the barriers at the Business included, but were not
14 limited to, the following:

- a. Defendants failed to comply with the federal and state standards for the parking space designated for persons with disabilities. Defendants failed to post required signage such as “Van Accessible” and “Minimum Fine \$250.”
 - b. Defendants failed to maintain the parking space designated for persons with disabilities to comply with the federal and state standards. Defendants failed to provide proper van accessible space designated for the persons with disabilities.
 - c. Defendants failed to maintain the parking space designated for persons with disabilities to comply with the federal and state standards. Defendants failed to paint the ground as required.
 - d. Defendants failed to maintain the parking space designated for persons with disabilities to comply with the federal and state

1 standards. Defendants failed to maintain the mark on the space with
2 the International Symbol of Accessibility.

3 11. These barriers and conditions denied Plaintiff the full and equal access to the
4 Business. Plaintiff wishes to patronize the Business again. However, Plaintiff is deterred
5 from visiting the Business because his knowledge of these violations prevents him from
6 returning until the barriers are removed.

7 12. Based on the violations, Plaintiff alleges, on information and belief, that
8 there are additional barriers to accessibility at the Business after further site inspection.
9 Plaintiff seeks to have all barriers related to his disability remedied. *See Doran v. 7-*
10 *Eleven, Inc.* 524 F.3d 1034 (9th Cir. 2008).

11 13. In addition, Plaintiff alleges, on information and belief, that Defendants
12 knew that particular barriers render the Business inaccessible, violate state and federal
13 law, and interfere with access for the physically disabled.

14 14. At all relevant times, Defendants had and still have control and dominion
15 over the conditions at this location and had and still have the financial resources to
16 remove these barriers without much difficulty or expenses to make the Business
17 accessible to the physically disabled in compliance with ADDAG and Title 24
18 regulations. Defendants have not removed such barriers and have not modified the
19 Business to conform to accessibility regulations.

20 **FIRST CAUSE OF ACTION**

21 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990**

22 15. Plaintiff incorporates by reference each of the allegations in all prior
23 paragraphs in this complaint.

24 16. Under the Americans with Disabilities Act of 1990 (“ADA”), no individual
25 shall be discriminated against on the basis of disability in the full and equal enjoyment of
26 the goods, services, facilities, privileges, advantages, or accommodations of any place of
27 public accommodation by any person who owns, leases, or leases to, or operates a place
28 of public accommodation. *See* 42 U.S.C. § 12182(a).

1 17. Discrimination, *inter alia*, includes:

- 2 a. A failure to make reasonable modification in policies, practices, or
3 procedures, when such modifications are necessary to afford such
4 goods, services, facilities, privileges, advantages, or accommodations
5 to individuals with disabilities, unless the entity can demonstrate that
6 making such modifications would fundamentally alter the nature of
7 such goods, services, facilities, privileges, advantages, or
8 accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 9 b. A failure to take such steps as may be necessary to ensure that no
10 individual with a disability is excluded, denied services, segregated or
11 otherwise treated differently than other individuals because of the
12 absence of auxiliary aids and services, unless the entity can
13 demonstrate that taking such steps would fundamentally alter the
14 nature of the good, service, facility, privilege, advantage, or
15 accommodation being offered or would result in an undue burden. 42
16 U.S.C. § 12182(b)(2)(A)(iii).
- 17 c. A failure to remove architectural barriers, and communication barriers
18 that are structural in nature, in existing facilities, and transportation
19 barriers in existing vehicles and rail passenger cars used by an
20 establishment for transporting individuals (not including barriers that
21 can only be removed through the retrofitting of vehicles or rail
22 passenger cars by the installation of a hydraulic or other lift), where
23 such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).
- 24 d. A failure to make alterations in such a manner that, to the maximum
25 extent feasible, the altered portions of the facility are readily
26 accessible to and usable by individuals with disabilities, including
27 individuals who use wheelchairs or to ensure that, to the maximum
28 extent feasible, the path of travel to the altered area and the

bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path or travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope. 42 U.S.C. § 12183(a)(2).

18. Where parking spaces are provided, accessible parking spaces shall be provided. 1991 ADA Standards § 4.1.2(5); 2010 ADA Standards § 208. One in every eight accessible spaces, but not less than one, shall be served by an access aisle 96 in (2440 mm) wide minimum and shall be designated “van accessible.” 1991 ADA Standards § 4.1.2(5)(b). For every six or fraction of six parking spaces, at least one shall be van parking space. 2010 ADA Standards § 208.2.4.

19. Under the ADA, the method and color of marking are to be addressed by State or local laws or regulations. *See* 36 C.F.R., Part 1191. Under the California Building Code (“CBC”), the parking space identification signs shall include the International Symbol of Accessibility. Parking identification signs shall be reflectorized with a minimum area of 70 square inches. Additional language or an additional sign below the International Symbol of Accessibility shall state “Minimum Fine \$250.” A parking space identification sign shall be permanently posted immediately adjacent and visible from each parking space, shall be located with its centerline a maximum of 12 inches from the centerline of the parking space and may be posted on a wall at the interior end of the parking space. *See* CBC § 11B-502.6, *et seq.*

20. Moreover, an additional sign shall be posted either in a conspicuous place at each entrance to an off-street parking facility or immediately adjacent to on-site accessible parking and visible from each parking space. The additional sign shall not be less than 17 inches wide by 22 inches high. The additional sign shall clearly state in letters with a minimum height of 1 inch the following: "Unauthorized vehicles parked in designated accessible spaces not displaying distinguishing placards or special license

1 plates issued for persons with disabilities will be towed always at the owner's expense..."

2 See CBC § 11B-502.8, *et seq.*

3 21. Here, Defendants failed to provide signs stating "Minimum Fine \$250" and
4 "Van Accessible."

5 22. For the parking spaces, access aisles shall be marked with a blue painted
6 borderline around their perimeter. The area within the blue borderlines shall be marked
7 with hatched lines a maximum of 36 inches (914 mm) on center in a color contrasting
8 with that of the aisle surface, preferably blue or white. The words "NO PARKING" shall
9 be painted on the surface within each access aisle in white letters a minimum of 12 inches
10 (305 mm) in height and located to be visible from the adjacent vehicular way. CBC §
11 11B-502.3.3.

12 23. Here, Defendants failed to properly maintain the access aisles as there were
13 no "NO PARKING" and no blue lines painted on the parking surface. Moreover,
14 Defendants failed to provide the access aisle with the minimum width of 96 inches.

15 24. The surface of each accessible car and van space shall have surface
16 identification complying with either of the following options: The outline of a profile
17 view of a wheel chair with occupant in white on a blue background a minimum 36" wide
18 by 36" high (914 mm x 914 mm). The centerline of the profile view shall be a maximum
19 of 6 inches (152 mm) from the centerline of the parking space, its sides parallel to the
20 length of the parking space and its lower side or corner aligned with the end of the
21 parking space length or by outlining or painting the parking space in blue and outlining
22 on the ground in white or a suitable contrasting color a profile view of a wheel chair with
23 occupant. See CBC § 11B-502.6.4, *et seq.*

24 25. Here, Defendants failed to maintain the mark on the surface with the
25 International Symbol of Accessibility on the surface as required.

26 26. A public accommodation shall maintain in operable working condition those
27 features of facilities and equipment that are required to be readily accessible to and usable
28 by persons with disabilities by the Act or this part. 28 C.F.R. 35.211(a). By failing to

1 maintain the facility to be readily accessible and usable by Plaintiff, Defendants are in
2 violation of Plaintiff's rights under the ADA and its related regulations.

3 27. The Business has denied and continues to deny full and equal access to
4 Plaintiff and to other people with disabilities. Plaintiff has been and will continue to be
5 discriminated against due to the lack of accessible facilities, and therefore, seeks
6 injunctive relief to alter facilities to make such facilities readily accessible to and usable
7 by individuals with disabilities.

SECOND CAUSE OF ACTION

VIOULATION OF THE UNRUH CIVIL RIGHTS ACT

10 28. Plaintiff incorporates by reference each of the allegations in all prior
11 paragraphs in this complaint.

12 29. California Civil Code § 51 states, “All persons within the jurisdiction of this
13 state are free and equal, and no matter what their sex, race, color, religion, ancestry,
14 national origin, disability, medical condition, genetic information, marital status, sexual
15 orientation, citizenship, primary language, or immigration status are entitled to the full
16 and equal accommodations, advantages, facilities, privileges, or services in all business
17 establishments of every kind whatsoever.”

18 30. California Civil Code § 52 states, "Whoever denies, aids or incites a denial,
19 or make any discrimination or distinction contrary to Section 51, 515, or 51.6, is liable
20 for each and every offense for the actual damages, and any amount that may be
21 determined by a jury, or a court sitting without a jury, up to a maximum of three times the
22 amount of actual damage but in no case less than four thousand dollars (\$4,000) and any
23 attorney's fees that may be determined by the court in addition thereto, suffered by any
24 person denied the rights provided in Section 51, 51.5, or 51.6.

31. California Civil Code § 51(f) specifies, “a violation of the right of any
individual under federal Americans with Disabilities Act of 1990 (Public Law 101-336)
shall also constitute a violation of this section.”

32. The actions and omissions of Defendants alleged herein constitute a denial of full and equal accommodation, advantages, facilities, privileges, or services by physically disabled persons within the meaning of California Civil Code §§ 51 and 52. Defendants have discriminated against Plaintiff in violation of California Civil Code §§ 51 and 52.

33. The violations of the Unruh Civil Rights Act caused Plaintiff to experience difficulty, discomfort, or embarrassment. The Defendants are also liable for statutory damages as specified in California Civil Code §55.56(a)-(c).

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA DISABLED PERSONS ACT

34. Plaintiff incorporates by reference each of the allegations in all prior paragraphs in this complaint.

35. California Civil Code § 54.1(a) states, “Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians’ offices, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, loading places, places of public accommodations, amusement, or resort, and other places in which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

36. California Civil Code § 54.3(a) states, “Any person or persons, firm or corporation who denies or interferes with admittance to or enjoyment of public facilities as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for the actual damages, and any amount as may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damages but in no

1 case less than one thousand dollars (\$1,000) and any attorney's fees that may be
2 determined by the court in addition thereto, suffered by any person denied the rights
3 provided in Section 54, 54.1, and 54.2.

4 37. California Civil Code § 54(d) specifies, “a violation of the right of an
5 individual under Americans with Disabilities Act of 1990 (Public Law 101-336) also
6 constitute a violation of this section, and nothing in this section shall be construed to limit
7 the access of any person in violation of that act.

8 38. The actions and omissions of Defendants alleged herein constitute a denial
9 of full and equal accommodation, advantages, and facilities by physically disabled
10 persons within the meaning of California Civil Code § 54. Defendants have
11 discriminated against Plaintiff in violation of California Civil Code § 54.

12 39. The violations of the California Disabled Persons Act caused Plaintiff to
13 experience difficulty, discomfort, and embarrassment. The Defendants are also liable for
14 statutory damages as specified in California Civil Code §55.56(a)-(c).

FOURTH CAUSE OF ACTION
UNFAIR COMPETITION ACT

17 40. Plaintiff incorporates by reference each of the allegations in all prior
18 paragraphs in this complaint.

19 41. Defendants have engaged in unfair competition, unfair or fraudulent
20 business practices, and unfair, deceptive, untrue or misleading advertising in violation of
21 the Unfair Competition Act. Bus & Prof. Code §§ 17200 *et seq.*

22 42. Defendants engage in business practices and policies that create systemic
23 barriers to full and equal access for people with disability in violation of state and federal
24 law.

25 43. The actions and omissions of Defendants are unfair and injurious to
26 Plaintiff, a consumer of the Business' goods and services. As a result of Defendants'
27 unfair business practice and policies, Plaintiff suffered injury in fact. Plaintiff was not
28 provided with goods and services provided to other consumers. Plaintiff seeks relief

1 necessary to prevent Defendants' continued unfair business practices and policies and
2 restitution of any month that Defendants acquired by means of such unfair competition,
3 including profits unfairly obtained.

4 **FIFTH CAUSE OF ACTION**

5 **NEGLIGENCE**

6 44. Plaintiff incorporates by reference each of the allegations in all prior
7 paragraphs in this complaint.

8 45. Defendants have a general duty and a duty under the ADA, Unruh Civil
9 Rights Act and California Disabled Persons Act to provide safe and accessible facilities
10 to the Plaintiff.

11 46. Defendants breached their duty of care by violating the provisions of ADA,
12 Unruh Civil Rights Act and California Disabled Persons Act.

13 47. As a direct and proximate result of Defendants' negligent conduct, Plaintiff
14 has suffered damages.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff respectfully prays for relief and judgment against
17 Defendants as follows:

18 1. For preliminary and permanent injunction directing Defendants to comply
19 with the Americans with Disability Act and the Unruh Civil Rights Act;

20 2. Award of all appropriate damages, including but not limited to statutory
21 damages, general damages and treble damages in amounts, according to proof;

22 3. Award of all reasonable restitution for Defendants' unfair competition
23 practices;

24 4. Reasonable attorney's fees, litigation expenses, and costs of suit in this
25 action;

26 5. Prejudgment interest pursuant to California Civil Code § 3291; and

27 6. Such other and further relief as the Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: November 17, 2022

SO. CAL. EQUAL ACCESS GROUP

By: /s/ Jason J. Kim
Jason J. Kim, Esq.
Attorneys for Plaintiff